

VENTURA COUNTY

Audit Report

PROPERTY TAX APPORTIONMENT AND ALLOCATION SYSTEM

July 1, 2006, through June 30, 2009



JOHN CHIANG
California State Controller

April 2012



JOHN CHIANG
California State Controller

April 3, 2012

The Honorable Christine L. Cohen
Auditor-Controller
Ventura County
800 South Victoria Avenue
Ventura, CA 93009-1540

Dear Ms. Cohen:

The State Controller's Office audited the methods employed by Ventura County to apportion and allocate property tax revenues for the period of July 1, 2006, through June 30, 2009. The audit was conducted pursuant to the requirements of Government Code section 12468.

Our audit disclosed that the county complied with California statutes, except that:

- The Educational Revenue Augmentation Fund (ERAF) was not included in the supplemental allocation.
- The county included the ERAF in the unitary and operating nonunitary tax apportionment computations during this audit period.
- The office of the Ventura County Superintendent of Schools was included in the payment of ERAF shortfall.
- The ERAF received mandatory pass-through moneys from the redevelopment agencies.

If you have any questions, please contact Steven Mar, Chief, Local Government Audits Bureau, at (916) 324-7226.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/bf

cc: Honorable John Zaragoza
Chairman of the Board
Ventura County
Jody Martin, Principal Consultant
Joint Legislative Budget Committee
Peter Detwiler, Staff Director
Senate Local Government Committee
Elvia Dias, Committee Assistant
Senate Local Government Committee
Dixie Martineau-Petty, Secretary
Assembly Local Government Committee
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Audit Report

Summary

The State Controller's Office (SCO) audited the methods employed by Ventura County to apportion and allocate property tax revenues for the period of July 1, 2006, through June 30, 2009.

Our audit disclosed that the county complied with California statutes for the allocation and apportionment of property tax revenues, except that:

- The Educational Revenue Augmentation Fund (ERAF) was not included in the supplemental allocation.
- The county included the ERAF in the unitary and operating nonunitary tax apportionment computations during this audit period.
- The office of the Ventura County Superintendent of Schools was included in the payment of ERAF shortfall.
- The ERAF received mandatory pass-through moneys from the redevelopment agencies.

Additionally, we noted the following observation.

Prior to fiscal year (FY) 2006-07, counties could not impose a fee, charge or other levy on a city, nor reduce a city's allocation of ad valorem property tax revenue, in reimbursement for the services performed by the county under Revenue and Taxation Code sections 97.68 and 97.70. Pursuant to Revenue and Taxation Code section 97.75, for FY 2006-07 and thereafter, a county may impose a fee, charge, or other levy on a city for these services, but the fee, charge, or other levy shall not exceed the actual cost of providing the services.

A dispute has arisen between the counties and the cities regarding the application of Revenue and Taxation Code section 95.3, relating to the computation of Property Tax Administration Fees (PTAF). The counties generally contend that distribution factors for purposes of distributing PTAF to taxing agencies should be computed including amounts received by cities under Revenue and Taxation Code section 97.68, commonly known as the "Triple Flip," and section 97.70, commonly known as the "VLF Swap." The cities generally believe that the Triple Flip and the VLF Swap should be excluded from the computation.

We are aware of two legal actions that have been filed on this issue.

- In the first action, 47 cities in Los Angeles County filed suit against the county. On June 2, 2009, the court referee determined that the method used by Los Angeles County was correct.
- In the second action, filed in Fresno County, seven cities filed suit against the county. In this action, the court ruled that the method used by Fresno County was not in accordance with statute. This is the same method approved by the referee in Los Angeles County.

The SCO will make a determination on the computation of the PTAF at such time as appeals (if any) are resolved.

Background

After the passage of Proposition 13 in 1978, the California State Legislature enacted new methods for allocating and apportioning property tax revenues to local government agencies and public schools. The main objective was to provide local government agencies with a property tax base that would grow as assessed property values increased. These methods have been further refined in subsequent laws passed by the Legislature.

One key law was Assembly Bill (AB) 8, Chapter 282, Statutes of 1979, which established the method of allocating property taxes for fiscal year (FY) 1979-80 (base year) and subsequent fiscal years. The methodology is commonly referred to as the AB 8 process or the AB 8 system.

The property tax revenues that local government agencies receive each fiscal year are based on the amount received in the prior year, plus a share of the property tax growth within their boundaries. Property tax revenues are then apportioned and allocated to local agencies and schools using prescribed formulas and methods defined in the Revenue and Taxation Code.

The AB 8 base process involved numerous steps, including the transfer of revenues from schools to local agencies (AB 8 shift) and the development of the tax rate area annual tax increment apportionment factors (ATI factors), which determine the amount of property tax revenues to be allocated to each jurisdiction.

The total amount to be allocated to each jurisdiction is then divided by the total amount to be allocated to all entities to determine the AB 8 apportionment factor (percentage share) for each entity for the year. The AB 8 factors are computed each year for all entities, using the revenue amounts established in the prior year. These amounts are adjusted for growth annually, using ATI factors.

Subsequent legislation removed revenues generated by unitary and nonunitary properties, regulated railway companies, and qualified electric properties from the AB 8 system. These revenues are now allocated and apportioned under separate systems.

Other legislation established an Educational Revenue Augmentation Fund (ERAF) in each county. Most local government agencies are required to transfer a portion of their property tax revenues to the fund. The fund is subsequently allocated and apportioned to schools by the county auditor according to instructions received from the county superintendent of schools or the State Chancellor of Community Colleges.

Revenues generated by the different types of property tax are apportioned and allocated to local agencies and schools using prescribed formulas and methods, as defined in the Revenue and Taxation Code. Taxable property includes land, improvements, and other properties that are accounted for on the property tax rolls maintained primarily by the county assessor. Tax rolls contain an entry for each parcel of land, including the parcel number, the owner's name, and the value.

Following are the types of property tax rolls:

- *Secured Roll*—This roll contains property that, in the opinion of the assessor, has sufficient value to guarantee payment of the tax levies and that, if necessary, can be sold by the tax collector to satisfy unpaid tax levies.
- *Unsecured Roll*—This roll contains property that, in the opinion of the assessor, does not have sufficient “permanence” or have other intrinsic qualities to guarantee payment of taxes levied against it.
- *State-Assessed Roll*—This roll contains public utility and railroad properties, assessed as either unitary or nonunitary property by the State Board of Equalization.
- *Supplemental Roll*—This roll contains property that has been reassessed due to a change in ownership or the completion of new construction, where the resulting change in assessed value is not reflected in other tax rolls.

To mitigate problems associated with the apportionment and allocation of property taxes, Senate Bill 418 was enacted in 1985 requiring the State Controller to audit the counties’ apportionment and allocation methods and report the results to the California State Legislature.

Objective, Scope, and Methodology

Our audit objective was to review the county’s apportionment and allocation of property tax revenues to local government agencies and public schools within its jurisdiction to determine whether the county complied with Revenue and Taxation Code requirements.

To meet the objective, we reviewed the systems for apportioning and allocating property tax revenues used by the county auditor and the subsystems used by the tax collector and the assessor.

We performed the following procedures:

- Conducted tests to determine whether the county correctly apportioned and allocated property tax revenue.
- Interviewed key personnel and reviewed supporting documentation to gain an understanding of the county’s property tax apportionment and allocation processes.
- Reviewed apportionment and allocation reports prepared by the county showing the computations used to develop the property tax distribution factors.
- Reviewed tax rate area (TRA) reports to verify that the annual tax increment was computed properly.
- Reviewed county unitary and operating nonunitary reports and Board of Equalization reports and verified the computations used by the county to develop the unitary and operating nonunitary property tax distribution factors.

- Reviewed redevelopment agency (RDA) reports prepared by the county and verified the computations used to develop the project base amount and the tax increment distributed to the RDA.
- Reviewed property tax administration cost reports prepared by the county and verified administrative costs associated with procedures used for apportioning and allocating property tax to local government agencies and school districts.
- Reviewed ERAF reports prepared by the county and verified the computations used to determine the shift of property taxes from local agencies to the ERAF and, subsequently, to public schools.
- Reviewed reports and computations prepared by the county to determine any increases in property tax revenues due cities having low or non-existent property tax amounts.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The audit covered the period of July 1, 2006, through June 30, 2009. However, we did not audit the county's financial statements. Our audit scope was limited to:

- Reviewing operational procedures and significant applicable controls over the apportionment and allocation process;
- Examining selected property tax apportionment and allocation records; and
- Reviewing related property tax revenue data used to determine the apportionment and allocation computation process.

A property tax bill contains the property tax levied at a 1% tax rate pursuant to the requirement of Proposition 13. A bill may also contain special taxes, debt services levies on voter-approved debt, fees, and assessments levied by the county or a city. The scope of our audit is concerned with the distribution of the 1% tax levy. Special taxes, debt service levies on voter-approved debt, fees, and assessments levied by the county or a city are beyond the scope of our audit and were not reviewed or audited.

We limited our review of the county's internal controls to gaining an understanding of the transaction flow in order to develop appropriate auditing procedures. We did not evaluate the effectiveness of all internal controls.

In addition, we tested transactions used to apportion and allocate property taxes and performed other procedures deemed necessary. This report relates solely to the method used by the county to apportion and allocate property taxes.

Conclusion

Our audit disclosed that, except for the items discussed in the Findings and Recommendations section of this report, Ventura County complied with California statutes for the apportionment and allocation of property tax revenues for the period of July 1, 2006, through June 30, 2009. The county should correct the items discussed in the Findings and Recommendations section.

Additionally, we noted the following observation.

Prior to FY 2006-07, counties could not impose a fee, charge or other levy on a city, nor reduce a city's allocation of ad valorem property tax revenue, in reimbursement for the services performed by the county under Revenue and Taxation Code sections 97.68 and 97.70. Pursuant to Revenue and Taxation Code section 97.75, for FY 2006-07 and thereafter, a county may impose a fee, charge, or other levy on a city for these services, but the fee, charge, or other levy shall not exceed the actual cost of providing the services.

A dispute has arisen between the counties and the cities regarding the application of Revenue and Taxation Code section 95.3, relating to the computation of Property Tax Administration Fees (PTAF). The counties generally contend that distribution factors for purposes of distributing PTAF to taxing agencies should be computed including amounts received by cities under Revenue and Taxation Code section 97.68, commonly known as the "Triple Flip," and section 97.70, commonly known as the "VLF Swap." The cities generally believe that the Triple Flip and the VLF Swap should be excluded from the computation.

We are aware of two legal actions that have been filed on this issue.

- In the first action, 47 cities in Los Angeles County filed suit against the county. On June 2, 2009, the court referee determined that the method used by Los Angeles County was correct.
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The SCO will make a determination on the computation of the PTAF at such time as appeals (if any) are resolved.

Follow-up on Prior Audit Findings

A finding noted in our prior audit, issued on December 23, 2008, regarding ERAF supplemental apportionment, has not been satisfactorily resolved. It is restated in this report.

**Views of
Responsible
Official**

We issued a draft audit report on June 16, 2011. Christine L. Cohen, Auditor-Controller, responded by letter dated July 8, 2011 (Attachment). She disagreed with the audit results.

Restricted Use

This report is solely for the information and use of Ventura County, the California Legislature, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

April 3, 2012

Findings and Recommendations

FINDING 1— Supplemental property tax

The county excluded the Education Revenue Augmentation Fund (ERAF) from the supplemental apportionment computations during this audit period.

The legal requirements for supplemental roll property tax apportionment and allocation are found in Revenue and Taxation Code sections 75.60 through 75.71, and 100.2. When there is a change in assessed property value due to changes in ownership or completion of new construction, the property owner is charged a supplemental property tax. This process enables the counties to retroactively tax property for the period when changes in ownership or completion of new construction occurred, rather than at the time the secured roll is developed.

Recommendation

The county should include the ERAF in future supplemental apportionments.

County's Response

We reiterate our position from the prior audit report comments: Ventura County did not improperly exclude ERAF from the supplemental apportionment computations. We further disagree with the finding based upon discussion of the issue of Betty Yee, Chair, State Board of Equalization. (Our discussion with Ms. Yee was communicated to the auditor during the course of his fieldwork). Ms. Yee was responsible for drafting the language in the Revenue and Taxation (R&T) code for the implementation of ERAF, and she confirmed that the Supplemental Roll was not included in ERAF. Ms. Yee further agreed with us that the audit report is attempting to apply the principles for apportioning the Equalized Roll (Secured, Unsecured and State Utility Rolls), which is governed by R&T code 95, et seq., to the apportionment of the Supplemental Roll, which is governed by R&T code 75, et seq. In the R&T code 75.70, ERAF is not referenced as a “school entity” that is to receive Supplemental Roll apportionments. According to the code, “all elementary, high school, and unified school districts within the county,” are to participate in the Supplemental Roll apportionments. R&T code 75.70 further specifies that the allocation of property tax revenues to these entities is to occur “without respect to the allocation of property tax revenues pursuant to Chapter 6 (commencing with section 95),” which governs the apportionment of the Equalized Roll and does include ERAF as a “school entity,” as defined by R&T code 95(f) [school districts, community college districts, the Educational Revenue Augmentation Fund, and county superintendents of schools].

Given R&T code 75.80 identifies the specific entities that participate in the Supplemental Roll apportionments, and the code does not reference school entities as defined under R&T code 95(f), which does include ERAF as a participating school entity, the County of Ventura is correct in its exclusion of ERAF from Supplemental Roll apportionments. In addition, as verified by the State Controller auditor, Ventura County is using the proper factors to apportion Supplemental Roll collections to, “all elementary, high school, and unified school districts within the

county;” therefore, all school entities are receiving the correct apportionment of the Supplemental Roll.

Given that our current method is consistent with Revenue and Taxation Code and agrees with the legislative intent per the author of the R&T Code, the County of Ventura respectfully declines to include ERAF in the Supplemental Roll apportionments.

SCO’s Comment

Revenue and Taxation (R&T) Code section 75.70(c) provides that supplemental property tax allocations to counties, cities, and special districts are to be calculated on the basis of each entity’s property tax apportionment factor determined “pursuant to section 97.5” (now section 96.2) (i.e., in accordance with section 96.2).

Supplemental property tax revenues are not included in the computation of property tax apportionment factors. However, the applicable law makes it clear that the allocation of such revenues is to be made on the basis of, and in accordance with, the apportionment factors.

After the supplemental property tax laws were enacted, section 97.5 (now section 96.2) was amended by Chapter 448, Statutes of 1984, adding as subdivision (f) the identical provision that is now in subdivision (c) of section 96.1 (i.e., supplemental tax revenues are not to be included for purposes of the section). But subdivision (f) was in effect for less than two months (July 16 to September 10, 1984). It was deleted from section 97.5 by Chapter 946, Statutes of 1984, which substituted the following as subdivision (h) of section 97.5:

- (h) Supplemental property tax revenues for 1985-86 and each year thereafter, generated by sections 75 to 75.80, inclusive, shall be apportioned using the property tax apportionment factors for the current year.

Subdivision (h) remained section 97.5 until reorganization of the property tax allocation statutes (Chapter 1167, Statutes of 1994). Former section 97.5 became section 96.2, and the above quoted subdivision (h) became section 100.2. The primary purpose of Chapter 1167 was to “clarify and reorganize” the property tax allocation code provisions. The Legislature did not intend any substantive change in transferring subdivision (h) to section 100.2. this provision was intended to have the same application it had over the previous ten years. The supplemental tax revenues are to be allocated by application of the current year’s apportionment factor.

However, the pertinent ERAF sections (section 97, et seq.) specifically provide that “Notwithstanding any other provision of this chapter, the computations and allocations made by each county pursuant to section 96.1 or its predecessor section . . . shall be modified. . . .” This supersedes the pre-ERAF apportionment factor formula.

Section 96.1 is modified by law. There is no unmodified section 96.1, nor any statute that provides for allocation of property tax revenues based on a pre-modified section 96.1 apportionment factor. Section 75.70(c) specifies that supplemental revenues are to be distributed using apportionment factors “pursuant” to section 96.2—that is, factors developed on the basis of a modified section 96.1.

In this regard, sections 97.2(d)(5), 98.2(e)(3), and 97.3(d)(5) specify that amounts allocated from the ERAF “shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.” Additionally, section 95(f) defines “school entities” as including ERAF. As a result of these sections, the ERAF is, in effect, treated the same as a school district with its own property tax apportionment factor. This is consistent with and supports the above interpretation that apportionment factors must be determined for all entities on the basis of a modified section 96.1—that is, after deduction of the ERAF shift moneys.

It should also be noted that Chapter D-6 of the California Property Tax Managers Reference Manual includes the ERAF as an entity to receive supplemental property taxes.

The county has also addressed the exclusion of the ERAF from the unitary and operating nonunitary apportionment process.

The ERAF is a fund—an accounting entity, not a taxing jurisdiction—and with respect to the allocation and apportionment of unitary and operating nonunitary taxes, the Legislature has not defined it as a taxing jurisdiction.

R&T Code section 95(b) defines a jurisdiction as a “local agency, school district, community college district, or county superintendent of school. . . .” R&T Code section 95(f) includes the ERAF in the definition of school entities. It states “School entities means school districts, community college districts, the Educational Revenue Augmentation Fund, and county superintendent of schools.” It is clear that the definition of jurisdiction does not include the ERAF but does include all defined school entities except the ERAF. Defining the ERAF as a school entity does not make it a jurisdiction.

R&T Code section 100(e)(3) includes a redevelopment agency as a taxing jurisdiction, demonstrating that the Legislature knows how to include non-taxing entities in the definition of taxing jurisdiction if it so desires. In this case, it omitted the ERAF from the definition of taxing jurisdiction.

The county has stated that its application of law “to include all taxing jurisdictions, including ERAF, in the Unitary Roll apportionment . . . is correct and is fully supported [sic] by clarification to R&T code 100.95(a)(3)(A)(i) for the 2007-08 fiscal year.” The county then quotes the section as included in its response above.

However, the county did not note that R&T Code section 100.95 is concerned with certain “qualified property” and not the unitary and operating nonunitary property of R&T Code section 100. R&T Code section 100.95(c)(1) states:

“Qualified property” means all plant and associated equipment, including substation facilities and fee-owned land and easements, placed in service by the public utility on or after January 1, 2007, and related to the following:

- (A) Electrical substation facilities that meet either of the following conditions:
 - (i) The high-side voltage of the facility’s transformer is 50,000 volts or more.
 - (ii) The substation facilities are operated at 50,000 volts or more.
- (B) Electric generation facilities that have a nameplate generating capacity of 50 megawatts or more.
- (C) Electrical transmission line facilities of 200,000 volts or more.

In addition, the county should exclude the ERAF from the unitary and operating nonunitary apportionment process. The finding remains as written.

FINDING 2— Redevelopment agencies

The Redevelopment Agency (RDA) AB 1290 mandatory pass-through included the ERAF.

Requirements for the apportionment and allocation of property tax to RDAs are found in Revenue and Taxation Code sections 96.4 and 96.5. California Community Redevelopment Law generally entitles a community redevelopment agency to all of the property tax revenues that are realized from growth in values since the redevelopment project’s inception.

Recommendation

The RDA mandatory AB 1290 pass-through should exclude the ERAF.

County’s Response

We disagree that Ventura County is incorrectly including ERAF in the Redevelopment Agency (RDA) mandatory AB 1290 pass-through. The methodology utilized by Ventura County to include ERAF in the RDA AB 1290 mandatory pass-through is consistent with our interpretation of the applicable statutes.

We understand this issue was raised by the Community Redevelopment Association (CRA) as a result of some counties requiring payment of pass-through to ERAF, even though ERAF is outside the counties’ AB 8 process, and ERAF did not contribute tax increment to the RDAs. In Ventura County, however ERAF is included in our AB 8 process and contributes tax increment to the RDAs; therefore, ERAF appropriately receives AB 1290 pass-through.

The CRA's position is supported by an unpublished opinion from the State Attorney General and a follow-up opinion from the State Controller; however, this issue is the subject of ongoing discussion statewide, and we will continue our current methodology until the issue is resolved either through direction from the State Association of County Auditors (SACA), through legislation, or through litigation.

SCO's Comment

ERAF is not considered an "effected taxing entity" for the purpose of computing pass-through amounts under the requirements of AB 1290. Therefore, it should be excluded from any redevelopment pass-through allocation. This finding remains as written.

FINDING 3— ERAF included in unitary and operating nonunitary apportionment

The county included the ERAF in the unitary and operating nonunitary tax apportionment computations for this audit period.

Requirements for the apportionment and allocation of unitary and operating nonunitary property taxes are found in Revenue and Taxation Code section 100.

Unitary properties are those properties on which the Board of Equalization "may use the principle of unit valuation in valuing properties of an assessee that are operated as a unit in the primary function of the assessee" (i.e., public utilities and railroads). The Revenue and Taxation Code further states, "Operating nonunitary properties are those that the assessee and its regulatory agency consider to be operating as a unit, but the board considers not part of the unit in the primary function of the assessee."

In FY 1988-89, the Legislature established a separate system for apportioning and allocating the unitary and operating nonunitary property taxes. The Legislature established the unitary and operating nonunitary base year and developed formulas to compute the distribution factors for the fiscal years that followed.

Recommendation

The county should not include the ERAF in future unitary and operating nonunitary tax apportionment computations, as the ERAF does not qualify as a "taxing jurisdiction" under Revenue and Taxation Code section 100. Thus, the ERAF is not eligible to share and its amount should be distributed proportionately among all taxing jurisdictions that contributed to the fund.

County's Response

We disagree with the State Controller's position that Ventura County is incorrectly including ERAF in unitary and operating nonunitary apportionments. Our apportionment process is correct and is fully supported by clarification to R&T code 100.95(a)(3)(A)(i) for the 2007-08 fiscal year. R&T code 100.95(a)(3)(A)(i) states:

“School entities, as defined in subdivision (f) of section 95 [school districts, community college districts, the Educational Revenue Augmentation Fund, and county superintendents of schools], shall be allocated an amount equivalent to the same percentage the school entities received in the prior fiscal year from the property tax revenues paid by the utility in the county in which the qualified property is located.”

Our inclusion of ERAF in unitary and operating nonunitary apportionments is further supported by a discussion with Betty Yee, Chair, Board of Equalization. (Our discussion with Ms. Yee was communicated to the auditor during the course of his fieldwork). Ms. Yee was responsible for drafting the language in the Revenue and Taxation (R&T) code for the implementation of ERAF, and she confirmed that ERAF participates in all revenue from the Equalized Roll, which includes unitary and operating nonunitary revenues.

The Statewide Property Tax Managers’ Reference Manual is consistent with our approach and illustrates the calculation to include ERAF. Furthermore, the State Association of County Auditors (SACA) recommends all county auditors make no changes in regards to ERAF in unitary and operating nonunitary apportionments and Revenue and Taxation Code and the Statewide Property Tax Managers’ Reference Manual, and, in addition, agrees with the legislative intent per the author of the R&T Code, the County of Ventura respectfully declines to exclude ERAF from unitary and operating nonunitary apportionments.

SCO’s Comment

The ERAF is a fund—an accounting entity, not a taxing jurisdiction. Revenue and Taxation Code section 100 requires that taxes for unitary and operating nonunitary property be allocated to taxing jurisdictions. As the ERAF is not taxing jurisdiction, it is not eligible to receive unitary and operating nonunitary taxes.

Revenue and Taxation Code section 100(c) states:

The property tax revenue derived from the assessed value assigned to the countywide tax rate area pursuant to subdivision (a) and pursuant to paragraph (2) of subdivision (a) of section 100.1 by the use of the tax rate determined in paragraph (1) of subdivision (b) shall be allocated as follows:

- (1) For the 1988-89 fiscal year and each fiscal year thereafter, each taxing jurisdiction shall be allocated an amount of property tax revenue

Revenue and Taxation Code section 95(a) defines a local agency as a “city, county and special district.” In addition, section 95(b) defines a jurisdiction as a “local agency, school district, community college district or county superintendent of schools.”

The county states that it will continue to follow the guidelines from the State Property Tax Managers’ Manual to allocate unitary and operating nonunitary tax to ERAF. While we recognize the guidelines prepared by the County Property Tax Managers’ Association as a guide, it is important to note that we audit to applicable statutes.

Our finding remains as written.

**FINDING 4—
Educational Revenue
Augmentation Fund
(ERAF)**

The office of the Ventura County Superintendent of Schools was included in the payment for the ERAF shortfall into the county's vehicle license fee (VLF) fund.

Requirements for the local agency shift of property tax revenues to the ERAF are primarily found in Revenue and Taxation Code sections 97.1 through 97.3. Beginning in FY 1992-93, most local agencies were required to shift an amount of property tax revenues to the ERAF using formulas detailed in the code. The property tax revenues in the ERAF are subsequently allocated to the public schools using factors supplied by the county superintendent of schools.

For FY 1992-93, the ERAF shift amount for cities was determined by adding a per capita amount to a percentage of property tax revenues received by each city. The amount for counties was determined by adding a flat amount, adjusted for growth, to a per capita amount. The amount for special districts was generally determined by shifting the lesser of 10% of that district's total annual revenues as shown in the FY 1989-90 edition of the State Controller's Report on Financial Transactions Concerning Special Districts or 40% of the FY 1991-92 property tax revenues received, adjusted for growth. Specified special districts were exempted from the shift.

For FY 1993-94, the ERAF shift for cities and counties was generally determined by:

- Reducing the FY 1992-93 ERAF shift by the FY 1992-93 per capita shift;
- Adjusting the result for growth; and
- Adding the result to a flat amount and a per capita amount determined by the Department of Finance, adjusted for growth.

The FY 1993-94 ERAF shift for special districts, other than fire districts, was generally determined by:

- Multiplying the property tax allocation for FY 1992-93, pre-ERAF, by the Special District Augmentation Fund (SDAF) factor for the district effective on June 15, 1993;
- Adjusting this amount by subtracting the FY 1992-93 shift to the ERAF;
- If the above amount is greater than zero, adjusting this amount for FY 1993-94 growth (zero is used for negative amounts); and
- Adding this amount to the FY 1992-93 ERAF shift, adjusting for growth.

For fire districts, the FY 1993-94 ERAF shift was generally determined by:

- Deducting the FY 1992-93 ERAF shift for the district from the FY 1992-93 property tax allocation;
- Multiplying the result by the SDAF factor for the district effective on June 13, 1993 (net current-year bailout equivalent);
- For a district governed by a board of supervisors, deducting the amount received from the SDAF in FY 1992-93 from the net current-year bailout equivalent; or, for an independent district, deducting the amount received from the SDAF and the difference between the net current-year bailout equivalent and the amount contributed to the SDAF from the net current-year bailout equivalent;
- Adjusting this amount for growth; and
- Adding this amount to the FY 1992-93 ERAF shift, adjusted for growth.

For fiscal years subsequent to FY 1993-94, the amounts determined are adjusted for growth annually to determine the ERAF shift amounts for that year.

Recommendation

The only districts identified in the Revenue and Taxation Code sections to make payments for the ERAF shortfall into the VLF fund are school districts and community college districts. For future ERAF shortfall payments, the office of the Ventura County Superintendent of Schools should be excluded from paying into the VLF fund.

County's Response

We disagree with the State Controller's position that the Ventura County Office of Education should be excluded from the payment for the ERAF shortfall ("negative ERAF") into the County's vehicle license fee (VLF) fund.

Revenue and Taxation Code Section 97.70(a)(1)(B) states that negative ERAF is to be allocated to **all** [emphasis added] school districts and community college districts in the county. The language of the R&T section only excludes school districts that are excess tax school entities, as defined in section 95 of the R&T Code. Earlier in that Chapter, under R&T Code 97.3, a "qualifying school entity" is defined to mean any school district, **county office of education** [emphasis added], or community college district that is not an excess tax school entity as defined in Section 95. The definition is further supported by R&T Code 95(f), which defines "school entities" as school districts, community college districts, the Educational Revenue Augmentation Fund, and **county superintendents of schools** [emphasis added].

We understand that basis for this finding is the absence of the county office of education in the example of how to allocate negative ERAF in the AB 1096 implementation guidelines (“VLF Swap & Triple Flip”). We have discussed the implementation guidelines with various members of county auditors’ offices who were part of the committee that drafted the guidelines. We have been assured that the county office of education is to be included in negative ERAF allocations. In addition, discussions with county property tax managers statewide indicate counties are allocating negative ERFA [sic] to the office of education as a standard practice.

Given that our current method is consistent with Revenue and Taxation Code, the AB 1096 implementation guidelines, and the standard practices of county auditors statewide, the Count of Ventura respectfully declines to exclude the county office of education from negative ERAF allocations.

SCO’s Comment

The county is correct in defining superintendent of schools as a school entity in Revenue and Taxation Code section 97.3. But Revenue and Taxation Code section 97.70 specifically excludes the superintendent of schools from the allocation of negative ERAF. This Revenue and Taxation Code section defines the methodology to reimburse the Vehicle License Fee Property Tax Compensation Fund and prohibits any reduction of allocation from the superintendent of schools as follows:

97.70(f) This section shall not be construed to do any of the following:

- (1) Reduce any allocations of excess, additional, or remaining funds that would otherwise have been allocated to county **superintendents of school**, cities, counties, and cities and counties pursuant to clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of sections 97.2 and 97.3 or Article 4 (commencing with Section 98) had this section not been enacted. The allocations required by this section shall be adjusted to comply with this paragraph.

The finding remains as written.

**Attachment—
County's Response to
Draft Audit Report**

CHRISTINE L. COHEN
AUDITOR-CONTROLLER
County of Ventura
800 South Victoria Avenue
Ventura, CA 93009-1540



CHIEF DEPUTIES
LOUISE WEBSTER
SANDRA BICKFORD
BARBARA BEATTY
JOANNE McDONALD

July 8, 2011

Mr. Steven Mar, Chief, Local Government Audits Bureau
State Controller's Office, Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874

**RE: AUDIT OF VENTURA COUNTY'S METHODS FOR APPORTIONING AND ALLOCATING
PROPERTY TAX REVENUES FOR THE PERIOD OF JULY 1, 2006, THROUGH JUNE 30, 2009**

Dear Mr. Mar:

As directed by your letter, which we received on June 22, 2011, we are responding to the audit findings that assert Ventura County is improperly:

1. excluding the Educational Revenue Augmentation Fund (ERAF) from Supplemental Roll apportionments;
2. including the Redevelopment Agency (RDA) mandatory AB 1290 pass-through in ERAF;
3. including ERAF in the unitary and operating nonunitary tax apportionment computations; and
4. including the Ventura County Superintendent of Schools in the payment for the ERAF shortfall into the County's vehicle license fee (VLF) fund.

Finding 1 – Supplemental Property Tax

We reiterate our position from the prior audit report comments: Ventura County did not improperly exclude ERAF from the supplemental apportionment computations. We further disagree with the finding based upon discussion of the issue with Betty Yee, Chair, State Board of Equalization. (Our discussion with Ms. Yee was communicated to the auditor during the course of his fieldwork.) Ms. Yee was responsible for drafting the language in the Revenue and Taxation (R&T) code for the implementation of ERAF, and she confirmed that the Supplemental Roll was not included in ERAF. Ms. Yee further agreed with us that the audit report is attempting to apply the principles for apportioning the Equalized Roll (Secured, Unsecured and State Utility Rolls), which is governed by R&T code 95, et seq., to the apportionment of the Supplemental Roll, which is governed by R&T code 75, et seq. In R&T code 75.70, ERAF is not referenced as a "school entity" that is to receive Supplemental Roll apportionments. According to the code, "all elementary, high school, and unified school districts within the county," are to participate in the Supplemental Roll apportionments. R&T code 75.70 further specifies that the allocation of property tax revenues to these entities is to occur "without respect to the allocation of property tax revenues pursuant to Chapter 6 (commencing with Section 95)," which governs the apportionment of the Equalized Roll and does include ERAF as a "school entity," as defined by R&T code 95(f) [school districts, community college districts, the Educational Revenue Augmentation Fund, and county superintendents of schools].

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Given R&T code 75.80 identifies the specific entities that participate in the Supplemental Roll apportionments, and the code does not reference school entities as defined under R&T code 95(f), which does include ERAF as a participating school entity, the County of Ventura is correct in its exclusion of ERAF from Supplemental Roll apportionments. In addition, as verified by the State Controller auditor, Ventura County is using the proper factors to apportion Supplemental Roll collections to, "all elementary, high school, and unified school districts within the county;" therefore, all school entities are receiving the correct apportionment of the Supplemental Roll.

Given that our current method is consistent with Revenue and Taxation Code and agrees with the legislative intent per the author of the R&T Code, the County of Ventura respectfully declines to include ERAF in the Supplemental Roll apportionments.

Finding 2 – Redevelopment Agencies

We disagree that Ventura County is incorrectly including ERAF in the Redevelopment Agency (RDA) mandatory AB 1290 pass-through. The methodology utilized by Ventura County to include ERAF in the RDA AB 1290 mandatory pass-through is consistent with our interpretation of the applicable statutes.

We understand this issue was raised by the Community Redevelopment Association (CRA) as a result of some counties requiring payment of pass-through to ERAF, even though ERAF is outside the counties' AB 8 process, and ERAF did not contribute tax increment to the RDAs. In Ventura County, however, ERAF is included in our AB 8 process and contributes tax increment to the RDAs; therefore, ERAF appropriately receives AB 1290 pass-through.

The CRA's position is supported by an unpublished opinion from the State Attorney General and a follow-up opinion from the State Controller; however, this issue is the subject of ongoing discussion statewide, and we will continue our current methodology until the issue is resolved either through direction from the State Association of County Auditors (SACA), through legislation, or through litigation.

Finding 3 – ERAF Included in Unitary and Operating Nonunitary Apportionment

We disagree with the State Controller's position that Ventura County is incorrectly including ERAF in unitary and operating nonunitary apportionments. Our apportionment process is correct and is fully supported by clarification to R&T code 100.95(a)(3)(A)(i) for the 2007-08 fiscal year. R&T code 100.95(a)(3)(A)(i) states:

"School entities, as defined in subdivision (f) of Section 95 [school districts, community college districts, the Educational Revenue Augmentation Fund, and county superintendents of schools], shall be allocated an amount equivalent to the same percentage the school entities received in the prior fiscal year from the property tax revenues paid by the utility in the county in which the qualified property is located."

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Our inclusion of ERAF in unitary and operating nonunitary apportionments is further supported by a discussion with Betty Yee, Chair, Board of Equalization. (Our discussion with Ms. Yee was communicated to the auditor during the course of his fieldwork.) Ms. Yee was responsible for drafting the language in the Revenue and Taxation (R&T) code for the implementation of ERAF, and she confirmed that ERAF participates in all revenue from the Equalized Roll, which includes unitary and operating nonunitary revenues.

The Statewide Property Tax Managers' Reference Manual is consistent with our approach and illustrates the calculation to include ERAF. Furthermore, the State Association of County Auditors (SACA) recommends all county auditors make no changes in regards to ERAF in unitary and operating nonunitary apportionments and continue to follow the Reference Manual for these apportionments. Since our current method is consistent with Revenue and Taxation Code and the Statewide Property Tax Managers' Reference Manual, and, in addition, agrees with the legislative intent per the author of the R&T Code, the County of Ventura respectfully declines to exclude ERAF from unitary and operating nonunitary apportionments.

Finding 4 – Educational Revenue Augmentation Fund (ERAF)

We disagree with the State Controller's position that the Ventura County Office of Education should be excluded from the payment for the ERAF shortfall ("negative ERAF") into the County's vehicle license fee (VLF) fund.

Revenue and Taxation Code Section 97.70(a)(1)(B) states that negative ERAF is to be allocated to *all* [emphasis added] school districts and community college districts in the county. The language of the R&T section only excludes school districts that are excess tax school entities, as defined in Section 95 of the R&T Code. Earlier in that Chapter, under R&T Code 97.3, a "qualifying school entity" is defined to mean any school district, *county office of education* [emphasis added], or community college district that is not an excess tax school entity as defined in Section 95. The definition is further supported by R&T Code 95(f), which defines "school entities" as school districts, community college districts, the Educational Revenue Augmentation Fund, and *county superintendents of schools* [emphasis added].

We understand the basis for this finding is the absence of the county office of education in the example of how to allocate negative ERAF in the AB 1096 implementation guidelines ("VLF Swap & Triple Flip"). We have discussed the implementation guidelines with various members of county auditors' offices who were part of the committee that drafted the guidelines. We have been assured that the county office of education is to be included in negative ERAF allocations. In addition, discussions with county property tax managers statewide indicate counties are allocating negative ERAF to the office of education as a standard practice.

Given that our current method is consistent with Revenue and Taxation Code, the AB 1096 implementation guidelines, and the standard practices of county auditors statewide, the County of Ventura respectfully declines to exclude the county office of education from negative ERAF allocations.

Mr. Steven Mar, Chief, Local Government Audits Bureau

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I would be happy to discuss the audit and our responses to the findings with you or your staff in more detail, if you wish. If you would like to speak with me, or if we can provide additional information in support of our position, please call me at (805) 654-3151. If you prefer, please do not hesitate to email me at christine.cohen@ventura.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cohen', with a horizontal line extending to the right.

Christine L. Cohen
Auditor-Controller

c: Michael Powers, County Executive Officer
Leroy Smith, County Counsel

**State Controller's Office
Division of Audits
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